INDEX TO APPENDIX

Page

A. *United States v. Paul Klein*, C.A. No. 06-10033, Memorandum Filed April 20, 2007 ..... App. 1

B. *United States v. Paul Klein*, U.S.D.C. Case No. 00-01181-WJR Judgment and Commitment dated March 4, 2002 ..... App. 4

C. *United States v. Paul Klein*, U.S.D.C. Case No. 00-01181, Stipulation Re: Correction of Judgment and Probation/Commitment Order; Order Filed May 7, 2002 ..... App. 13

APPENDIX A

2007 WL 1171542

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee, V. PAUL KLEIN, Defendant-Appellant.	No. 06-10033 D.C. No. CR-04-00208-RLH MEMORANDUM* (Filed Apr. 20, 2007)

Appeal from the United States District Court
for the District of Nevada
Roger L. Hunt, District Judge, Presiding

Argued and Submitted April 12, 2007
Pasadena, California

Before: B. FLETCHER, McKEOWN, and BYBEE, Circuit Judges.

Appellant Paul Klein ("Appellant") appeals the district court's decision denying his motion to suppress evidence obtained as the result of a warrantless search of his house. The facts and procedural history are familiar to the parties, and we do not repeat them here. Appellant challenges the district court's suppression ruling on two grounds.

---

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

First, Appellant argues that the search of his home violated the Fourth Amendment because it was conducted without a warrant. We review such claims de novo, and we also review the district court's "[f]actual findings . . . for clear error." *United States v. Manning*, 56 F.3d 1188, 1196 (9th Cir. 1995). Applying that standard, we hold that the search of Appellant's home did not run afoul of the Fourth Amendment because, as a condition of his probation, Appellant was subject to a valid warrantless search condition that permitted probation officers to search his home and the probation officers who conducted the search did so based on a "reasonable suspicion that . . . [Appellant] [was] engaged in criminal activity." *United States v. Knights*, 534 U.S. 112, 121 (2001).[1] The probation officers had reasonable suspicion that Appellant was violating the terms of his probation because they saw a sword in plain view next to his bed, and Appellant was prohibited from possessing dangerous weapons. When one of the probation officers asked Appellant whether he had any other dangerous weapons in the house, Appellant became evasive and did not respond.

Second, Appellant argues that we should reverse the district court's suppression ruling because he was not given access to probation logs that government witnesses used to refresh their memory before they testified at the

---

[1] We reject Appellant's attack on the search condition's validity. The totality of the circumstances indicates that he knowingly and voluntarily agreed to that condition and waived any statutory right to a hearing and assistance of counsel before it was imposed. *See Beckwith v. United States*, 425 U.S. 341, 348 (1976). Moreover, we must also reject Appellant's collateral attack on the validity of his prior sentence. *See Custis v. United States*, 511 U.S. 485, 490-97 (1994); *United States v. Martinez-Martinez*, 295 F.3d 1041, 1044 (9th Cir. 2002).

hearing on Appellant's suppression motion. We hold that the magistrate judge did not abuse her discretion when she refused to order the production of those logs after she reviewed them *in camera*. *See United States v. Sua*, 307 F.3d 1150, 1152 (9th Cir. 2002).

Accordingly, Appellant's conviction is **AFFIRMED.**

APPENDIX B

United States District Court
Central District of California

UNITED STATES OF AMERICA	**vs.**	**Docket No. CR-**	00-01181-WJR
Defendant	Paul Richard Klein	**Social Security**	XXX-XX-XXXX (true);
[Illegible]	None	**No.**	XXX-XX-XXXX
Residence Address	725 S. Hualapal #1025, Bldg. 7 Las Vegas, Nevada 89145	**Mailing Address**	3311 E. Flamingo Road Las Vegas, NV, 89121

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government, the defendant appeared in person on this date

MONTH	DAY	YEAR
03	04	2002

COUNSEL		**WITH COUNSEL**	Paul Richard Klein, pro se **(Name of Counsel)**

PLEA	X	GUILTY, and the court being satisfied that there is a factual basis for the plea.		NOLO CONTENDRE		NOT GUILTY

FINDING	There being a finding/verdict of		GUILTY, defendant has been convicted as charged of the offense(s) of:

Passing and Possessing Counterfeit Currency of the United States with intent to Defraud in violation of 18 USC 472 as charged in Count 1 of the 2-Count Indictment

JUDGMENT AND PROBATION COMMITMENT ORDER	The Court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the Court, the Court adjudged the defendant guilty as charged and convicted and ordered that: Pursuant to the Sentencing Reform Act of 1984, it is the judgment of the Court that the defendant is hereby committed to the custody of the Bureau of Prisons to the be imprisoned for a term of:

Four (4) months

Upon release from imprisonment, the defendant shall be placed on supervised release for a term of three years under following terms and conditions:

1. The defendant shall comply with the rules and regulations of the U.S. Probation Office and General Order 318;

2. The defendant shall participate for a period of 4 months in a home detention program which includes electronic monitoring and shall observe all rules of such program, as directed by the Probation Officer;

3. The defendant shall pay the costs of electronic monitoring to the contract vendor, not to exceed the sum of $4.60 for each day participation in the electronic monitoring program. The defendant

shall provide payment and proof of payment as directed by the Probation Officer; and

4. During the period of community supervision the defendant shall pay special assessment and fine in accordance with this judgment's orders pertaining to such payment.

The drug testing condition mandated by statute is suspended based on the Court's determination that the defendant poses a low risk of future substance abuse.

It is ordered that the defendant shall pay to the United States a special assessment of $100, which is due immediately.

It is ordered that the defendant shall pay to the United States a total fine of $5000.

The fine shall be paid in full immediately.

The defendant shall comply with General Order No. 01-05.

The Court grants government's motion to dismiss remaining counts, in the interest of justice.

The bond is exonerated upon payment of the fine.

Defendant waives appeal rights.

In addition to the special conditions of supervision imposed above, it is hereby ordered that the Standard Conditions of Probation and Supervised Release set out on the reverse side of this judgment be imposed. The Court may change the conditions of supervision, reduce or extend the period of supervision, and at any time during the supervision period or within the maximum period permitted by law,

may issue a warrant and revoke supervision for a violation occurring during the supervision period.

This is a direct commitment to the Bureau of Prisons, and the Court has NO OBJECTION should the Bureau of Prisons designate defendant to a Community Correction Center.

Signed by: U.S. District Judge /s/ William J. Rea
WILLIAM J. REA

It is ordered that the Clerk deliver a certified copy of this Judgment and Probation/Commitment Order to the U.S. Marshal or other qualified officer.

Sherri R. Carter, Clerk

Dated/Filed 3-7-02 By /s/ Paul M. Cruz
Paul M. Cruz, Deputy Clerk

The defendant shall comply with the standard conditions that have been adopted by this court (set forth below). The defendant shall comply with the additional conditions on the attached page(s) pursuant to General Orders 318 and 01-05.

Statutory Provisions Pertaining to Payment and Collection of Financial Sanctions

The defendant shall pay interest on a fine or restitution of more than $2,500, unless the court waives interest or unless the fine or restitution is paid in full before the fifteenth (15th) day after the date of the judgment pursuant to 18 U.S.C. §3612(f)(1). Payments may be subject to penalties for default and delinquency pursuant to 18 U.S.C. §3612(g). Interest and penalties pertaining to

restitution, however, are not applicable for offenses completed prior to April 24, 1996.

If all or any portion of a fine or restitution ordered remains unpaid after the termination of supervision, the defendant shall pay the balance as directed by the United States Attorney's Office. 18 U.S.C. §3613.

The defendant shall notify the United States Attorney within thirty (30) days of any change in the defendant's mailing address or residence until all fines, restitution, costs, and special assessments are paid in full. 18 U.S.C. §3612(b)(1)(F).

The defendant shall notify the Court through the Probation Office, and notify the United States Attorney of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay a fine or restitution, as required by 18 U.S.C. §3664(k). The Court may also accept such notification from the government or the victim, and may, on its own motion or that of a party or the victim, adjust the manner of payment of a fine or restitution pursuant to 18 U.S.C. §3664(k). See also 18 U.S.C. §3572(d)(3) and for probation 18 U.S.C. §3663(a)(7).

Payments shall be applied in the following order:

1. Special assessments pursuant to 18 U.S.C. §3013;
2. Restitution, in this sequence:
   Private victims (individual and corporate),
   Providers of compensation to private victims,
   The United States as victim;
3. Fine;
4. Community restitution, pursuant to 18 U.S.C. §3663(c); and
5. Other penalties and costs.

Special Conditions for Probation and Supervised Release

As directed by the Probation Officer, the defendant shall provide to the Probation Officer: (1) a signed release authorizing credit report inquiries; (2) federal and state income tax returns or a signed release authorizing their disclosure and (3) an accurate financial statement, with supporting documentation as to all assets, income and expenses of the defendant. In addition, the defendant shall not apply for any loan or open any line of credit without prior approval of the Probation Officer.

The defendant shall maintain one personal checking account. All of defendant's income, "monetary gains," or other pecuniary proceeds shall be deposited into this account, which shall be used for payment of all personal expenses. Records of all other bank accounts, including any business accounts, shall be disclosed to the Probation Officer upon request.

The defendant shall not transfer, sell, give away, or otherwise convey any asset with a fair market value in excess of $500 without approval of the Probation Officer until all financial obligations imposed by the Court have been satisfied in full.

STANDARD CONDITIONS OF PROBATION AND SUPERVISED RELEASE

While the defendant is on probation or supervised release pursuant to this judgment:

1. The defendant shall not commit another Federal, state or local crime;

2. the defendant shall not leave the judicial district without the written permission of the court or probation officer;

3. the defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month;

4. the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;

5. the defendant shall support his or her dependents and meet other family responsibilities;

6. the defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;

7. The defendant shall notify the probation officer within 72 hours of any change in residence or employment;

8. the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to any controlled substances, except as prescribed by a physician;

9. the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;

10. the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;

11. the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;

12. the defendant shall notify the probation officer within 72 hours of being arrested or questioned by a law enforcement officer;

13. the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;

14. as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement;

15. the defendant shall not possess a firearm or other dangerous weapon;

16. the defendant shall, upon release from any period of custody, report to the probation officer within 72 hours.

These conditions are in addition to any other conditions imposed by this Judgment.

RETURN

I have executed the within Judgment and Commitment as follows:

Defendant delivered on _____ to _____

Defendant noted on appeal on _____

Defendant released on _____

Mandate issued on _____

Defendant's appeal determined on _____

Defendant delivered on _____ to _____

at _____, the institution designated by the Bureau of Prisons, with a certified copy of the within Judgment and Commitment.

UNITED STATES MARSHAL

DATED: _____ BY:

_____

CERTIFICATE

I hereby attest and certify this date that the foregoing document is a full, true and correct copy of the original on file in my office, and my legal custody.

[SEAL]

CLERK U.S. DISTRICT COURT

DATED: March 11, 2002 BY: /s/ Paul M. Cruz

Paul M. Cruz,
Deputy Clerk

APPENDIX C

JOHN S. GORDON
United States Attorney
RONALD L. CHENG
Assistant United States Attorney
Acting Chief, Criminal Division
KEVIN S. ROSENBERG (SBN 174593)
Assistant United States Attorney
1200 United States Courthouse
312 North Spring Street
Los Angeles, California 90012
Telephone: (213) 894-3756
Facsimile: (213) 894-0141

Attorney for Plaintiff
UNITED STATES OF AMERICA

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. PAUL RICHARD KLEIN, Defendant.	No. CR 00-1181-WJR STIPULATION RE: CORRECTION OF JUDGMENT AND PROBATION/ COMMITMENT ORDER; ~~[PROPOSED]~~ ORDER (Filed May 7, 2002)

Plaintiff United States of America, by and through its counsel of record, Assistant United States Attorney Kevin S. Rosenberg, and defendant Paul Richard Klein ("defendant") proceeding pro se, hereby stipulate as follows:

1. The parties request that the Court issue a corrected judgment and probation/commitment order deleting the language "Upon release from imprisonment, the

defendant shall be placed on supervised release for a term of three years under the following terms and conditions" appearing immediately prior to the terms and conditions of supervised release and replacing it with the language "Defendant shall be placed on probation for a period of three years under the following terms and conditions."

2. On March 4, 2002, the Court held a sentencing hearing in defendant's case. The Court did not sentence defendant to imprisonment. However, the Court inadvertently stated that it sentenced defendant to three years "supervised release" with four months home detention, rather than stating that it sentenced defendant to three years probation with a special condition of four months home detention.

3. Defendant currently resides in the Las Vegas, Nevada area. In order for the probation officer in this district to transfer defendant's case to a probation officer in the District of Nevada the judgment and commitment order must accurately reflect a sentence to three years probation rather than supervised release.

IT IS SO STIPULATED.

Respectfully Submitted,

JOHN S. GORDON
United States Attorney

DATED: ~~April~~ [MAY] 6, 2002

/s/ Kevin S. Rosenberg
KEVIN S. ROSENBERG
Assistant United States Attorney

Attorneys for Plaintiff
UNITED STATES OF AMERICA

DATED: ~~April~~ [MAY] 3rd, 2002 /s/ Paul Richard Klein
PAUL RICHARD KLEIN
Attorney Pro Se

ORDER

GOOD CAUSE HAVING BEEN SHOWN, IT IS SO ORDERED.

DATED: May 7, 2002 /s/ William J. Rea
HONORABLE WILLIAM J. REA
UNITED STATES DISTRICT JUDGE